

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
NORTHERN DIVISION**

MCKLEIN COMPANY, LLC

Plaintiff,

v.

MONARCH DESIGNS, INC. and  
MONARCH LUGGAGE CO., INC.

Defendants.

**CASE NO. 08 CV 1491**

Judge David H. Coar

Magistrate Judge Jeffrey Cole

**REPORT OF PARTIES' PLANNING CONFERENCE**

Pursuant to the Court's Order dated May 12, 2008, Plaintiff and CounterClaim-Defendant McKlein Company, LLC ("McKlein") and Defendants and Counterclaim-Plaintiffs Monarch Designs, Inc. and Monarch Luggage Co., Inc. (collectively "Monarch"), through their respective counsel, hereby jointly report to the Court regarding their Rule 26(f) conference in which they discussed:

1. the nature and basis of their claims and defenses;
2. the possibilities for a prompt settlement or resolution of this case;
3. to make or arrange for the disclosures required under Rule 26(a)(1); and
4. to develop a discovery plan.

To that end, the parties propose the following:

**A.** The issues in this case may be simplified by taking the following steps:

1. None at this time.

**B.** The following modifications to the discovery requirements of the Federal Rules of Civil Procedure or Local Rules should be made in order to expedite discovery.

1. None.

**C.** Discovery will be needed on the following subjects:

1. Infringement and non-infringement;
2. Additional parties to be added as co-defendants;
3. Sales and accounting data of accused products;
4. Product design of accused products;
5. Validity and invalidity;
6. Inequitable conduct (unenforceability);
7. Plaintiff and Counterclaim-Defendant's pre-filing investigation;
8. Claim construction;
9. Damages.

**D.** Discovery should not be conducted in phases.

**E.** The parties agreed that initial disclosures under Rule 26(a) should take place on or before June 23, 2008.

**F.** The parties have agreed that electronically stored information shall be produced in PDF format and then bates-stamped numerically, with the exception of Microsoft Excel files which shall be produced both in PDF format as well as electronically in their native format.

**G.** The parties have agreed that a protective order will be necessary and that they will prepare a joint protective order to present to the Court.

**H.** Discovery is not likely to be contentious. However, the parties agree that management of discovery can be referred to the Magistrate Judge.

**I.** The parties do not consent to this matter being referred to the Magistrate Judge for final disposition.

**J.** The parties have discussed the possibility of alternative dispute resolution and concluded that it would not be fruitful at this time.

**K.** The parties have discussed a prompt settlement or other resolution of this matter. The plaintiff has made a written demand and the Defendants have made an initial settlement offer.

**L.** The Court should consider the following methods of expediting the resolution of this matter: None.

Dated: June 11, 2008

*Attorneys for Plaintiff and CounterClaim-Defendant,  
McKlein Company, LLC.*

/s/ Vladimir I. Arezina

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**PROPOSED SCHEDULING ORDER**

**1. Discovery**

The following time limits and deadlines shall be applicable.

- A. All disclosures required by Rule 26(a)(1) shall be made on or before June 23, 2008.
- B. Any amendments to pleadings or actions to join other parties shall be filed on or before August 22, 2008.
- C. Claim Construction and Invalidity
  - 1. The parties envision a target *Markman* Hearing date of February 23, 2009.
  - 2. The patent holder shall disclose asserted claims and infringement contentions by October 20, 2008.
  - 3. The accused infringers shall disclose any invalidity contentions by November 23, 2008.
  - 4. All parties shall exchange their respective versions of proposed terms and claim elements for construction in the form of jury instructions by December 8, 2008.
  - 5. All parties shall disclose any extrinsic evidence in support of their respective claim constructions by December 22, 2008. As to any experts so disclosed, a Rule 26(a)(2) report shall be included as part of the disclosure. Discovery as to extrinsic evidence shall be on an expedited basis.

6. Any modification to the proposed terms and claim elements for construction shall be filed by January 12, 2009.
  7. All parties shall file their memoranda in support of their respective versions of claim construction along with any exhibits to be offered during the *Markman* hearing and a list of witnesses who will be called to testify at the hearing by February 2, 2009. (In addition to any lay witnesses called, each side is limited to no more than one expert witness)
- D. The cutoff of any other fact discovery is April 27, 2009.
  - E. The parties shall disclose any other expert testimony pursuant to Rule 26(a)(2), and serve all relevant expert's reports, on or before June 29, 2009
  - F. The parties may depose the other side's expert at any time prior to July 27, 2009.
  - G. The parties shall disclose any rebuttal expert pursuant to Rule 26(a)(2)(c) at any time prior to July 27, 2009.
  - H. The parties shall have until August 10, 2009 to depose the opposing party's rebuttal expert.

## **2. Motions**

Any dispositive motions to be filed on or before May 25, 2009.

## **3. Final Pretrial Order and Conference**

The final pretrial order shall be filed on or before August 24, 2009.

The final pretrial conference will be held on \_\_\_\_\_ at \_\_\_\_\_.m.

## **4. Trial**

Trial is set in this matter on \_\_\_\_\_ at 10:00 a.m.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge